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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 8th June 2007

No.7568-1i/1-(B)-335/1991(pt)/L.E.— In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 30th March 2007 in I.D. Case No. 30/1992 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Executive Engineer, Rengali Dam Division, Rengali and its workman Shri Purushottam Swain was referred for adjudication is hereby published as in the schedule below:—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 30 of 1992

Dated the 30th March 2007

Present:

Shri S.K. Mohapatra, O.S.J.S. (Jr.Branch),
Presiding Officer,
Labour Court,
Bhubaneswar.

Between:

The Management of Executive
Engineer, Rengali Dam Division,
Rengali.

... First-Party—Management

And

It's Workman

Shri Purusottam Swain.

... Second-Party—Workman

Appearances :

Shri S. S. Kobi, Advocate.

... For First-Party—Management

Shri S. B. Das, Advocate.

... For Second-Party—Workman

AWARD

The Government of Orissa, Labour & Employment Department referred the present dispute between the Management of Executive Engineer, Rengali Dam Division, Rengali and its workman Shri Purusottam Swain under Notification No. 14679/LE., dated the 21st October 1991 vide Memo. No. 2802(4)/L.E., dated the 22nd February 1992 for adjudication by this Court.

2. The terms of reference by the State Government is as follows :

“ Whether the refusal of services of Shri Purusottam Swain by the Executive Engineer, Rengali Dam Division, Rengali Dam Site with effect from the 1st June 1984 is legal and/or justified ? If not, to what relief the workman is entitled ?”

3. Shorn of all unnecessary details, the case of the workman is as follows :

The workman was appointed under the Executive Engineer, Rengali Dam Project (hereinafter referred to as the Management) on the 1st January 1982 as Work-sarkar and was posted at Rengali Dam Site. Suddenly the workman became ill and after filing a leave application on the 1st June 1984 and after taking permission of the authorities, he went to his native place for medical treatment. The illness of the workman was diagnosed as T.B. for which he was hospitalised. As per medical advice, the workman remained in the hospital upto 31st December 1987 and was under leave. After obtaining fitness certificate the workman joined in his duty on the 1st January 1988 alongwith his joining report and medical certificate. The Sub-Divisional Officer of Rengali Sub-Division accepted the joining report and referred the medical certificate to the Chief District Medical Officer, Sambalpur for verification. The Chief District Medical Officer after making proper verification issued a certificate in favour of the workman and also intimated the Management about the same. Thereafter the Management terminated the services of the workman with effect from the 24th June 1988 on the ground that the workman had remained absent from work for more than one year. On the dispute raised by the workman, the Labour authorities tried for a conciliation which failed and therefore, the present reference was made to this Court.

4. In his written statement, the Management has denied the averments made by the workman and has contended that on the 1st June 1984 the workman went to his village by handing over one C.L. application to the Junior Engineer concerned that he was proceeding to his village for treatment of his ailing mother but subsequently the workman remained absent from his duty for a very long period without applying any kind of leave to his authorities. After returning from his unauthorised leave the workman simply submitted his joining report on the 1st January 1988 to the Management instead of submitting the same to the Assistant Executive Engineer, Rengali Dam Division No.1 where the workman was working before he proceeded on leave. On the 1st January 1988 the workman had not filed any fitness certificate from the doctor under whom he was under treatment. The Sub-Divisional Officer, Rengali Dam Division No.1 vide letter dated the 2nd March 1988 was requested to obtain medical certificate regarding illness of the workman from the 2nd September 1985 to 29th December 1987 and accordingly the Sub-Divisional Officer, Rengali Dam Sub-Division

No.1 had moved the T.B. Specialist, Sadar Hospital, Sambalpur vide his letter No. 234, dated the 25th March 1988 for the medical certificate in question. After receipt of the medical certificate, the Sub-Divisional Officer submitted it to the office of the Executive Engineer on the 29th April 1988. Thereafter the matter was referred to the Superintending Engineer, Rengali Dam Circle, Rengali who after careful consideration terminated the service of the workman with effect from the 1st June 1984 and the said order was communicated to the workman on the 24th June 1988. The service of the workman was terminated because of his unauthorised long absence from work without obtaining prior permission from the authorities concerned. The action taken by the Management was in accordance with clause 17(3)(b) governing the condition of service of work charged employees. The main ground taken by the Management is that the workman had never applied any leave before leaving headquarter till the end of his leave and had not taken permission from the competent authority. On these averments the Management has sought for rejection of the prayer of the workman for reinstatement in service with full back wages.

5. On the aforesaid pleadings of the parties, the following issues have been framed.

ISSUES

- (i) Whether the refusal of employment to the workman with effect from the 1st June 1984 amounts to retrenchment ?
- (ii) Is the Management bound to follow the mandatory requirement of Section 25-F of the I.D. Act in the case ?
- (iii) If not, to what relief ?

Thereafter this Court heard both the parties and gave opportunity to them to adduce evidence and thereafter vide Award dated the 28th May 1999 held the termination of service of the workman by the Management to be legal and justified .

Being aggrieved by the Award, the workman preferred a writ petition vide O.J.C. No. 9340 of 1999 before the Hon'ble High Court of Orissa. vide order dated the 2nd September 2005 the Hon'ble High Court of Orissa in O.J.C. No. 9340 of 1999 in Para 6 and 7 of the judgment held as follows :

“ In the light of the aforesaid decisions if the petitioner's case is examined it is found that the petitioner had initially in his deposition has stated that on the 1st June 1984 he went on leave on the ground of illness and recovered on 31st December 1987 and reported for duty on the 1st January 1988. He has further stated that he was not allowed to perform his work and his representation to the Management was considered and report was called for from the T.B. Specialist, Sadar Hospital, Sambalpur. Even on the face of such report the opposite party did not allow him continue in service and has terminated his service by order dated 24th June 1988. Ext.3 is the report submitted by the T.B. Specialist. It is stated in the said report that the petitioner was suffering from T.B. and was under treatment of the said Doctor in the hospital since 2nd September 1985 to 31st December 1987. He was advised rest since 2nd September 1985 to 31st December 1987. He said report also shows that the petitioner had been advised to take rest and resume duty from the 1st January 1988. In view

of the above, the finding of the Labour Court that there is no medical evidence or fitness certificate is an error of record. It was pointed by the learned Additional government Advocate that even accepting said report by the time the petitioner suffered from T.B. and started treatment he was already on leave for more than one year without any further intimation after taking initial leave on the ground of his mother's illness and that under the Instruction, 1974, having remained absent for more than one year his services could be terminated. Though there is force in the submission of the learned Additional government Advocate in this regard, but considering the decisions referred to above it was obligatory on the part of the Management to give an opportunity of hearing to the petitioner before terminating his services. This aspect of the matter has not at all been considered by the Labour Court in the award. It also appears that such a point was never raised or discussed before the Labour Court. From the record it appears that parties have also not led evidence in this regard. Under the circumstances, I am of the view that the matter should be remitted back to the Labour Court for fresh disposal taking into consideration the aforesaid point raised by the learned counsel for the petitioner as well as the decisions cited in support of the same.

Accordingly, the award in Annexure-2 is quashed and the Labour Court is directed to notice all parties. After fixing a date the parties shall be heard on the aforesaid question and the Labour Court shall decide with the issue with reference to the decisions quoted earlier. Parties may be allowed to adduce further evidence only on the question of reasonable opportunity of hearing, if necessary.

With the aforesaid observations and directions, the writ application is disposed of."

6. In writ petition No. 9340 of 1999 the Hon'ble High Court of Orissa have made it very clear that in view of the report of the T.B. Specialist vide Ext.3 that the workman was suffering from T.B. and was under treatment of the T.B. Specialist in the hospital since 2nd September 1985 to 31st December 1987 and had been advised rest since 2nd September 1985 to 31st December 1987 and further that the report showed that the workman had been advised to take rest and resume duty from the 1st January 1988, the finding of the Labour Court that there was no medical evidence or fitness certificate was an erroneous conclusion. In view of this finding of the Hon'ble High Court, it is needless to go into the evidence regarding illness of the workman during the relevant period and about his non-filing of any fitness certificate on the date of his joining i.e. on the 1st January 1988. The very Ext.3 is to be accepted as the fitness certificate of the workman as well as his certificate regarding his illness during the period 2nd September 1985 to 31st December 1987.

7. Now the main question arises as to whether sufficient opportunity had been given to the workman before termination of his service in view of the decisions of the Hon'ble Apex Court in the case of *M/s. Lakshmi Precision Screws Ltd. Vs. Ram Bahagat*, reported in AIR 2002 S.C. 2914, *Uptron India Ltd. Vs. Shammi Bhan and another*, reported in 1998 LAB I.C. 1545 and *M/s. Scooters India Ltd. Vs. Mohammed Yaqub and another*, reported in AIR 2001 SC 227 relied on by the Hon'ble High Court of Orissa in the judgment in W.P.(C) No. 9340 of

1999. M.W.2 has been examined by the Management on this question. According to M.W.2 the workman did not attend his duty without intimation to the Management and did not produce necessary documents before the Management within one year of his service and therefore the Service Book of the workman could not be prepared and consequently the Management did not have the local address or the permanent address of the workman with them. Further evidence of M.W.2 is that as because the Management did not have any address of the workman with them, it was not possible for the Management to send notice to the workman when he remained absent from duty. Although M.W.2 was examined in his case after direction of the Hon'ble Court in W.P.(C) No. 9340 of 1999, M.W.2 has not whispered a single word as to whether sufficient opportunity had been given or not to the workman before termination of his service. On this question, in his cross-examination M.W.2 has stated that a copy of the notice of termination from service was issued to the workman on 24th June 1988 vide Ext.4 whereby the service of the workman was terminated with retrospective effect from the 1st January 1988 because of his unauthorised absence. According to M.W.2, the Management did not frame any charge against the workman and did not appoint any Enquiring Officer before termination of the service of the workman. Further evidence emanating from the cross-examination of M.W.2 is that the Management did not issue any show cause notice to the workman and also did not issue any second show cause notice before termination of the services of the workman. According to M.W.2 no such notice was necessary in view of Ext.C in which the workman had been directed to produce medical certificate in support of his treatment. Ext.D is the Notification regarding regularisation of Service Conditions of Work-charged employees. Rule 16 sub-rule 14 of Ext.D shows that unauthorised absence from place of duty can itself constitute mis-conduct on the part of a work-charged employee and shall be punishable with punishment as enumerated in Rule 17 of Ext.D According to M.W.2, there was no notice necessary to the workman before termination of his service in view of the express provision under Ext.D. Such a contention is simply not acceptable in view of the law decided by the Hon'ble Apex Court in the cases M/s. Lakshmi Precision Screws Ltd. Vs. Ram Bhagat, reported in AIR 2002 S.C.2914, Uptron India Ltd. Vs. Shammi Bhan and another, reported in 1998 LAB. I.C. 1545 and M/s. Scooters India Ltd. Vs. Mohammed Yaqub and another, reported in AIR 2001 SC 227 wherein it has been specifically held that as a principle of natural justice a workman is entitled to show cause notice before termination of his service. Consequently an opportunity of being heard is a must before the Management can terminate the service of a workman. Since the very witness of the Management M.W.2 has categorically stated that no opportunity had been given to the workman before termination of his service, it is needless to go into the evidence of the workman in that regard. There is nothing in the cross-examination of the workman W.W.1 to show that any opportunity had been given to him to show cause before termination of his service. On the other hand, the lengthy cross-examination of W.W.1 had centred around failure of the workman to furnish the medical certificate regarding his illness and regarding the enamoly that when the workman first proceeded on leave submitted casual leave

application on the ground of illness of his mother and subsequently be took stand that he himself was ailing. This matter has been set at rest by the judgment of the Hon'ble High Court in W.P.(C) No. 9340 of 1999 wherein the Hon'ble High Court have already held that Ext.3 is not only the proof regarding illness of the workman but also is a proof regarding his fitness to resume his duty with effect from 1st January 1988. Thus it is apparent that the Management had not given a reasonable opportunity of hearing to the workman before terminating his service and therefore, the order of termination of the services of the workman vide Ext.4 is vitiated.

8. Hence Ordered :

The termination of service of the workman with effect from the 1st June 1984 vide Ext. 4 is illegal and unjustified. The workman is entitled to the relief of reinstatement in service with 25% (twenty five percent) of his salary as back wages.

The reference is answered accordingly.

Dictated and corrected by me.

S.K. Mohapatra
30-3-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

S.K. Mohapatra
30-3-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

By order of the Governor

N. C. RAY
Under-Secretary to Government